

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH BIVINS, a/k/a  
JOSEPH BERNARD BIVENS,

No. C 07-5643 MHP (pr)

**ORDER OF DISMISSAL**

Petitioner,

v.

M. C. KRAMER, warden,

Respondent.


Joseph Bivens' habeas corpus petition challenging his conviction was denied on the merits in 1998 in Bivens v. Lungren, Case No. C 96-3655 MHP, and affirmed on appeal in 1999 in Ninth Circuit Case No. 98-15913. Three times thereafter Bivens tried to file another habeas petition to challenge the same 1975 conviction and three times the court dismissed the actions with instructions that Bivens had to obtain permission from the Ninth Circuit Court of Appeals to file a second or successive petition. See Bivens v. Newland, Case No. 00-3477 MHP.; Bivins v. Runnel, Case No. 04-4411 TEH, and Bivins v. Runnel, Case No. C 04-4751 MHP. Bivens finally sought permission from the Ninth Circuit, but that court denied his application for authorization to file a second or successive petition. See Bivins v. Kramer, 9th Cir. No. 07-71124, Order filed May 17, 2007. Notwithstanding the denial of the application for authorization to do so, Bivens has now filed his fifth habeas petition to challenge the 1975 conviction. This action must be dismissed because the Ninth Circuit has not authorized this court to consider another habeas petition. See 28 U.S.C. § 2244(b)(3)(A).

1 Finally, the court notes that Bivens appears to be seeking renewed consideration based  
2 on a DNA evidence issue. It appears, however, that the state court granted his application for  
3 DNA evidence but the result did not help him. The Contra Costa County Superior Court  
4 issued an order dated November 2, 2006, stating that Bivens sought DNA testing in 2002, a  
5 public defender was appointed, and DNA testing was done. The DNA test result inculpated  
6 rather than cleared Bivens. See Motion For Writ of Habeas Corpus, Exh. M, p. 1.

7 This action is DISMISSED. The motion for leave to proceed in forma pauperis is  
8 DENIED as unnecessary. (Docket # 2.) The motion for appointment of counsel is DENIED  
9 because the action is being dismissed. (Docket # 4.) The clerk shall close the file.

10 IT IS SO ORDERED.

11 DATED: March 4, 2008

  
Marilyn Hall Patel  
United States District Judge